IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5021 of 2000

and

SPECIAL CIVIL APPLICATION No 7061 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMC - THROUGH MUNICIPAL COMMISSIONER

Versus

MANILAL MANUBHAI JADAV

Appearance:

1. Special Civil Application No. 5021 of 2000

MR RM CHHAYA for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 08/04/2004

ORAL COMMON JUDGEMENT

Both these petitions arise from the same proceedings and common judgment and award dated 4th October, 1999 passed by the Labour Court, Ahmedabad in Reference (L.C.A.) No. 1206 of 1998. They are being heard together and they are now being disposed of by this common judgment.

1.1. Special Civil Application No. 5021 of 2002 has been filed by the Ahmedabad Municipal Corporation (hereinafter referred to as "the Corporation") challenging the award to the extent it directs to reinstate the concerned workman with 20% backwages whereas Special Civil Application No. 7061 of 2001, is filed by the concerned workman challenging the award to the extent it denies him 80% backwages.

2. The facts of the case as they emerge from the record of this petition can be stated as under.

2.1. According to the workman, he was working with the Corporation since 1981 as sweeper and was discharging duty in the health department. It appears that he was served with the chargesheet on the allegation that he had committed certain acts of misconduct. The misconduct alleged against him is that despite repeated warnings, he had been remaining absent from the service and secondly that he had assaulted his superior officer on 28th June, 1995. After compliance of due procedure, inquiry was held and during the course of the same adequate opportunity was given to the workman to defend his interest. As can be seen from the fact that on this aspect there is no dispute and the inquiry that was conducted against him has not been challenged before the Labour Court. Ultimately, the Inquiry Officer, found that the material produced before him establish the acts of misconduct against the workman. The disciplinary authority, on the basis of the report of the Inquiry Officer thought it fit to dismiss the workman from the service, as according to him, the acts of misconduct committed by the workman were of serious nature. The workman was served with the showcause notice calling upon him to showcause why he should not be dismissed from the service. The said notice is dated 23rd October, 1996. Alongwith the notice, findings of the Inquiry Officer were also forwarded to the workman. He chose not to reply to the said showcause notice within stipulated time. Ultimately by order dated 24th November, 1997, the workman was dismissed from the service.

2.2. It is the say of the workman, that after

dismissal from service, he made several attempts to secure job for him, but he failed to do so, hence, he and his family members virtually starved. Since his request for reinstatement was not acceded to by the Corporation, and since the dispute raised by him could not be conciliated, Reference was made by the Assistant Labour Commissioner, Ahmedabad vide order dated 9th July, 1998 under the provisions of Section 10 (1) (c) of the Industrial Disputes Act, 1947.

2.3. Before the Labour Court, both the parties adduced evidence. However, no challenge was made by the workman against the inquiry and the proceedings were conducted on the basis that the inquiry that was held against him was proper. The Labour Court thus, after considering the material that was placed before it came to the same conclusion namely that the petitioner was guilty of committing acts of misconduct alleged against him in the chargesheet. However, according to Labour Court, the order of dismissal from the service passed against the workman was grossly disproportionate to the nature of misconduct proved to have been committed by the workman. The Labour Court, therefore, thought it fit to exercise power under Section 11 (A) of the Industrial Disputes Act. On the question of quantum of punishment, it ultimately found that ends of justice would meet if order of dismissal was quashed and set aside and instead reinstatement with 20% backwages was granted. Accordingly, the Labour Court passed the impugned award which is now the subject matter of challenge of both these petitions.

3. Mr. R.M. Chhaya learned advocate appearing for the Corporation has submitted that there were evidence on record to show that the workman's wife was earning Rs.1,200=00 per month and, therefore, there was no substance in the observation made by the Labour Court that dismissal of the workman from service would mean ringing of his death knell. He has further submitted that considering the fact that the workman had assaulted his superior officer in front of the staff of the Corporation and thereby, he had broken the discipline of the Corporation. Such person is not only reinstated but also awarding 20% of backwages it would amount to encouraging indiscipline in the Corporation, which cannot be done.

3.1. As against that, Mr. Mukesh Rathod learned advocate appearing for the workman, has submitted that when the Labour Court found that the order of dismissal was very harsh and when the reinstatement was ordered, it

ought to have been awarded 100% backwages since the workman had remained out of job on account of high-handed action of the Corporation. He has further submitted that there was no evidence on record to show that the workman had been gainfully employed elsewhere and that he had other means of income.

4. Having carefully gone through the record of the petition and having carefully considered the submissions, it appears that the workman had repeatedly indulged into such activities which were prejudicial to the interest of the Corporation. Not only that, but had committed acts of serious misconduct. When the disciplinary authority passed the order of dismissal from the service, the scope of judicial review of such order could be very limited and the Labour Court has exercised the same while resorting to the powers conferred upon him under Section 11 (A) of the Industrial Disputes Act.

5. On the facts and circumstances, the Labour Court came to the conclusion that considering the nature of misconduct held to be proved against the workman, the punishment imposed by the disciplinary authority was excessive and it was required to be reduced. Thus, while exercising power under Section 11 (A) of the Industrial Disputes Act, the Labour Court had thought it fit to direct the Corporation to reinstate the workman together with 20% of backwages. Thus, by way of punishment, the Corporation has denied 80% backwages to the concerned workman. When the judicial review of the impugned order regarding dismissal has already been made by the Labour Court by resorting to power under Section 11 (A) of the Industrial Dispute Act, it will not be open for me in the petition under Article 227 of the Constitution of India to again reappreciate the entire material forming part of this petition and come to a different conclusion from that of the Labour Court on the quantum of punishment. I have taken same view in the other matters also and I do not find any reasons to deviate from it. In this petition, when the Labour Court has applied its mind, and has imposed punishment, which in its opinion is appropriate, in the facts and circumstances, I do not see any reason to interfere with the same again.

For the aforesaid reasons, both these petitions are ordered to be dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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